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No. 95-824

Supreme Court, U.S.
FILED
DEC 14 1995
CLERK

In The

Supreme Court of the United States

October Term, 1995

Dianna Dair Meyer,

Petitioner,

vs.

Shearson Lehman Brothers, Inc.

Respondents.

Supplement to
Petition for a Writ of Certiorari to the
United States Court of Appeal Eleventh Circuit

SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION 4 - REVISED

4. If the deferred Motion to Vacate at the District Court is vacated, based on Federal Arbitration Act 9 U.S.C.Section 10 and the alleged fraudulent evidence presented by Respondents during the arbitration, conforms to the three part test used to identify fraud by ***Bonar v. Dean Witter Reynolds, Inc.***, 835 F.2d 698 (11th Cir. 1988), will this sexual harassment, sexual discrimination, age discrimination, retaliation and constructive discharge civil rights case be sent back to arbitration or will it be sent to trial with a judge and jury.

Appendix E is a true copy of the United States Court for the Middle District of Florida Orlando Division ORDER dated November 15, 1995 and received November 17, 1995. Because the Petition for Writ of Certiorari was already at the printers, this Supplement to the Petition for a Writ of Certiorari is being added to revise and address Question 4. Since the Motion to Vacate is no longer deferred at the District Court based on the ORDER the corrected question 4 should read:

4. Whether this Court is in agreement that the Motion to Vacate by Petitioner based on Federal Arbitration Act 9 U.S.C. Section 10 and the alleged fraudulent evidence presented by Respondents during the arbitration, conforms to the three part test used to identify fraud by ***Bonar v. Dean Witter Reynolds, Inc.***, 835 F.2d 698 (11th Cir. 1988) and would be sufficient grounds for vacatur.

TABLE OF CONTENTS

Page

Question 4 - Revised..... i

Table of Contents..... ii

Table of Citations..... *iii*

Appendices..... *iii*

Statement of the Case..... 2

A. The existence of fraud by clear and convincing evidence.
B. The fraud was not discoverable upon the exercise of due diligence prior to or during the arbitration.
C. That the fraud materially related to an issue in the arbitration.

Reasons for Granting the Writ..... 7

I. The Motion to Vacate the arbitration award in NYSE Case No. 1993-003185 should be permitted because the "tracking sheet" presented by Shearson is an example of false evidence.

II. The ORDER entered on November 4, 1994 and included as Appendix B page B-17 states "Vacatur of an arbitrator's award for refusing to hear evidence is rare".

Conclusion..... 9

TABLE OF CITATIONS

Cases Cited: *Page*

Bonar v. Dean Witter Reynolds, Inc., 835 F.2d 698 (11th Cir. 1988).....i,2,7

Harris v. Forklift Systems, Inc. 114 S.Ct. 367 (1993).....6

Hoteles Condado Beach, La Concha & Convention Center v. Union de Tronquistas Local 901, 763 F.2d 34 (1st Cir. 1985).....8

Statutes Cited:

9 U.S.C. Section 1-16 (FAA).....i,7

APPENDICES

Appendix E - Order of the United States District Court Middle District of Florida Orlando Division Dated November 15, 1995.....E-1

Appendix F - Outline of Workbook "the Arrogance of Power".....F-1

Appendix G - Respondent's arbitration Exhibit #12.....G-1

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This supplemental brief is submitted to update the petition based on Supreme Court Rule 15.8 where an "intervening matter not available at the time of the party's last filing" requires an update to reflect an ORDER that was filed on November 15, 1995 and received by Petitioner after the Writ had been sent to the printer's. Supreme Court Rule 14.1 (a) states "only questions set out in the petition, or fairly included therein, will be considered by the Court". Petitioner is attempting to rectify any misstatement in question 4 based on the Court's ORDER of November 15, 1995 and added as Appendix E.

STATEMENT OF THE CASE

On April 19, 1994 a three person arbitration panel of the New York Stock Exchange rendered a $0 award to Plaintiff in Case No. 1993-003185 following four days of testimony, witnesses and exhibits covering charges of sexual harassment, sexual discrimination, age discrimination, retaliation and constructive discharge. This supplemental petition addresses the Motion to Vacate an arbitration award filed July 19, 1994 with the United States District Court Middle District of Florida Orlando Division. On November 4, 1994 the Court issued its ORDER which was included as Appendix B of Petitioner's original submittal.

Additional information became available to Petitioner and on November 21, 1994 a request was made to consider new evidence of a fraudulent document which had been submitted by Respondent during the arbitration. Petitioner cited the Court's ORDER (Appendix B) page 5 where it stated that "the Eleventh Circuit has adopted a three-part test to determine whether an arbitration award should be vacated under Title 9 U.S.C. section 10(a). ***Bonar v. Dean Witter Reynolds, Inc.***, 835 F.2d 1378, 1383 (11th Cir. 1988). The movant must prove : (1) the existence of fraud by clear and convincing evidence; (2) that the fraud was not discoverable upon the exercise of due diligence prior to or during the arbitration; and (3) that the fraud materially related to an issue in the arbitration, i.e. that it deprived the party of a fair hearing, although no showing that the fraud affected the result is required."

A. The existence of fraud by clear and convincing evidence.

Appendix G is a copy of Respondent's arbitration Exhibit #12 . It is referred to as a "tracking device" and titled Diana (misspelled) Meyer Class 87-4 and was used by the Shearson branch manager to track performance in the initial stages of the financial consultant trainee program in the Winter Park Branch of

Shearson Lehman Brothers (a.k.a Smith Barney a subsidiary of Travelers Inc.).

Arbitration Exhibit #12 is a fraudulent document. It was presented by Shearson. The document consists of a two page, handwritten sheet of notes used exclusively by the Shearson branch manager in the Winter Park Branch Office. He is the sole person who filled in the numbers and the sole person who had access to that document. He claims that the numbers were given to him by the financial consultants during weekly meetings, but there is no way to verify that the numbers given to the branch manager were the numbers that he wrote down. He alone had control of the data recorded and retained possession of the document.

In reviewing the document there is a white space in the center covering a period of time from 8/31 to 9/28. Meyer was fired on September 9, 1987 without cause. Her accounts, her clients, her ability to make a living were taken from her, and she was told to remove her belongings by close of business that day. Because Meyer had been fired, the word Chicago, which appears in the far left column, is an error. Meyer's class of 87-41 went to Chicago for their one week "final" training session during the week of September 14, 1987. Meyer did not attend, because she was not employed by Shearson at that time.

Petitioner returned to the employment of Shearson on October 5, 1987. Because she had missed the "final" training session for her class, she was rescheduled to go to Chicago the week of November 30, 1987. She was in Chicago the entire week attending training classes from 8:00 a.m. until 6:00 p.m. Monday through Friday. Three affidavits have been submitted to the Court verifying that Meyer was in Chicago and attended the training classes during the week of November 30, 1987. The affidavits include the following:

1) Herman K. Golnik, Jr.(Doc.73,Exhibit L)
2) Robert Hyde (Doc.81)
3) Frank Grossman (Doc.82)

The numbers that Shearson has entered for Petitioner on the "tracking sheet" for the week of November 30, 1987 are an example of false evidence. Petitioner never made those calls, contacts or presentations. She never had two appointments, entered on the "tracking sheet", because she was not in Winter Park in the Branch Office. She was in Chicago in a Shearson mandated training class.

Additional fabrications exist and include the week of 11/23 in which Meyer's records show that she had 5 appointments, opened 4 Accounts, made 290 calls, had 162 contacts, identified 31 prospects, took Thanksgiving vacation off and flew to Chicago on United flight 509 departing Orlando 4:08 and arriving 5:44 Sunday, November 29, 1987. A copy of Petitioners calendar was included in Document 92, Exhibit 1 to verify her activities during the week of 11/23. Additional affidavits were secured from former clients to verify the fact that Meyer actually opened 4 Accounts (the tracking sheet shows 2) and brought in assets of $37,000 (the tracking sheet shows $7,000). The additional affidavits include the following:

1) David Harris (Doc.93, Exhibit 1)-opened 2 accounts with a total value of approximately $30,000.
2) Kenyon Eflin (Doc.93, Exhibit 2)-opened an IRA for $2,000.
3) Dilip Parikh (Doc. 93, Exhibit 3)-opened a regular account and purchased a $5,000 annuity.

B. The fraud was not discoverable upon the exercise of due diligence prior to or during the arbitration.

The document under dispute was not provided to Meyer or her legal counsel, Jim Leone, as required by the NYSE Rules of Arbitration within 10 days prior to the actual arbitration sessions. It was not listed on their *Respondent Shearson Lehman Brothers' Exhibit List* for the arbitration which included 46 exhibits. A copy of their Exhibit List was provided in Doc.73 as Exhibit N. The fraudulent document was introduced during the branch manager's

testimony. While a copy may have been lodged with the arbitration panel members and the court reporter, copies were not provided to Meyer, who was the only one who could have validated or reviewed the numbers. The arbitration was held in Clearwater, Florida and Meyer had no access to records, calendars or anything that could possibly help in corroborating the notes on the "tracking sheet".

The fact is, only the branch manager had access to the "tracking sheet" prior to and up until the arbitration. No one in the Shearson offices, other than the branch manager, had it in their possession. Copies were not given to the brokers at the time they were being tracked, or at anytime after tracking took place. There was no way to know if the numbers that the broker gave to the branch manager, which is how he states he obtained the numbers, were the numbers that he actually wrote down. It was a stand-alone, handwritten document that Meyer had not even viewed and only vaguely remembered from six years prior to its surprise introduction at the arbitration. There was no ability for discovery or due diligence without a copy of the document according to NYSE Arbitration Rules.

C. That the fraud materially related to an issue in the arbitration.

The sole purpose of the fraudulent document was to become Shearson's self-serving proof and establish the "pretext" that Petitioner Meyer had a performance problem. The fraudulent document was the only tangible piece of evidence produced by Shearson during the arbitration that was "material" in their attempt to substantiate performance from Petitioner's first employment with Shearson in January, 1987 through December, 1988. Shearson was unable, or unwilling, to produce a solitary report for this time period, which could have been generated by their internal operations computer system.

Even the comparison of performance was not to other

brokers, but to a "handwritten" group of "Weekly Min Goals", again written in by the branch manager across the top of the page. Those numbers are suspect, because the branch manager was the only person who used this document. Since he determined the numbers there would be no reason to place the quotas on the top of the page, unless they were deliberately placed there for the benefit of influencing the arbitrators during the arbitration.

The truth, however, was available in the Workbook, which was discussed in the original filing on page 21. Petitioner had assembled the "workbook" for her arbitration presentation. It was titled Shearson Lehman's Arrogance of Power and an outline was provided as Doc. 53, Exhibit E. Appendix F is a true copy of the workbook outline.

In the workbook Section B.3 - Sexual Harassment, there were extensive references to precedent setting Supreme Court cases including multiple newspaper clips quoting both Justice Sandra Day O'Connor and Justice Ruth Bader Ginsberg on the, then, recently decided ***Harris v. Forklift Systems, Inc.*** 114 S.Ct. 367 (1993) case. Section C included a history of Shearson/American Express from 1989 - 1994 and gave a fairly graphic overview of the corporate culture that existed at Shearson during that period of time. Section D was Petitioner's way of showing how the Securities Industry conducts its business with an emphasis on bottom level, branch business.

Section D also included the following:

D.1 - Organization Chart 1989

D.2 - Organization Chart 1988

D.38 - Summary sheet created by D.Meyer using the performance numbers from Shearson Computer Printouts, which were also included as back-up and identified as pages D.39 through D.51. In reviewing this data which covered performance numbers from June, 1988 through September, 1988 and in comparison with all other brokers in the Shearson Winter Park office, it shows Meyer, not as the lowest producer as claimed by

Shearson, but as the fourth highest producer out of eleven brokers in her similar category.

However, as has been stated in the original filing, the workbook was not permitted to be included as evidence by the arbitrators. Shearson objected, the arbitrators caucused, and the arbitrators refused the workbook even though the data from the workbook had been provided to Shearson's legal counsel 10 days prior to the arbitration as required by NYSE Arbitration Rules. The arbitrators gave no reason, and under the NYSE Rules of Arbitration, are permitted total discretion with the acceptance or rejection of evidence during arbitration proceedings.

REASON FOR GRANTING THE WRIT

I The Motion to Vacate the arbitration award in NYSE Case No. 1993-003185 should be permitted because the "tracking sheet" presented by Shearson is an example of false evidence.

False evidence is fraud. The fraudulent document, "tracking sheet", satisfies the criteria used to determine fraud in ***Bonar v. Dean Witter Reynolds, Inc.,*** 835 F.2d 1378, 1383 (11th Cir. 1988). Petitioner believes that sufficient grounds have been presented to overturn the Eleventh Circuit's per curiam ruling and to vacate this case under Title 9 U.S.C. section 10 (a).

II. The ORDER entered on November 4, 1994 and included as Appendix B page B-17 states "Vacatur of an arbitrator's award for refusing to hear evidence is rare".

In this case Shearson was permitted to establish the pretext of poor performance using a handwritten tracking sheet . The only other source of poor performance was that of the testimony of the branch manager. Shearson's entire case pivoted around the branch manager, and what he said or did to create an illusion of poor performance.

Using the arbitration exhibit which was included as Appendix D in the original submittal, Shearson never disputed that Meyer had been fired not once, but two times by the branch manager. They claimed it was poor performance. However, in each case, the branch manager was overruled and Meyer was returned. Petitioner viewed these events as harassment under the guise of a hostile work environment.

The branch manager placed six (6) separate quota restrictions on Meyer during a span of 16 months, four of which overlapped each other. The question became, which one do you make? In 1987 and 1988 Petitioner made all of her quota's and in several instances exceeded them even while being singled out by the branch manager for the dubious distinction of being "documented". During her two years in production she was forced to move her business equipment and belongings by direction of the branch manager on nine (9) separate occasions. The disruption of each move was sufficient enough to create havoc on any person's performance. The terminations without cause, the forced and unwarranted quotas, the forced moves all set up a pattern and practice of hostile work environment. The pattern and practice was brought to a head when Petitioner and two other female financial consultants were removed from their offices and forced into secretarial desks in hallways in April of 1989. No male financial consultants were similarly situated. None of the women were the lowest producers based on Shearson's own Commission Reports. All three women testified at the arbitration.

All reports in the branch went through the branch manager, and only were made available on an ad hoc basis after the E.F. Hutton people moved into the branch office in May, 1988. It was not until Meyer had access to these reports (identified above in the workbook Section D) that she was able to evaluate her own performance against others, which reinforced the fact that she was not the lowest performer and, in fact, was the fourth highest out of eleven in the same or similar category. These reports were excluded by the arbitrators when they rejected the workbook. The

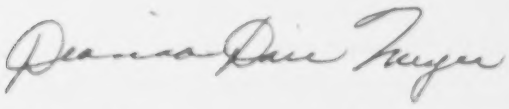
reports were pieces of relevant evidence.

The denial of the use of the workbook as evidence in essence was a denial of a fair hearing and merits vacatur in NYSE Case No. 1993-003185. "It is appropriate only when the exclusion of relevant evidence so affects the rights of party that it may be said that he or she was deprived of a fair hearing. ***Hoteles Condado Beach, La Concha & Convention Center v. Union de Tronquistas Local 901,*** 763 F.2d 34, 39-40 (1st Cir. 1985)."

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,



Dianna Dair Meyer, Pro Se

APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DIANNA D. MEYER,
Plaintiff,

vs. Case No. 91-193-CIV-ORL-19

SHEARSON LEHMAN BROTHERS, INC.,
Defendant.

ORDER

The Plaintiff's Request for Rehearing on Motion to Vacate Arbitration Award (Doc. No. 73, filed November 21, 1994), Motion to Supplement the Record (Doc. No. 84, filed February 16, 1995) and Motion to Supplement the Record (Doc. No. 88, filed March 3, 1995) are **DENIED as moot** based on Judgment of the United States Court of Appeals (Doc. No. 96, filed October 30, 1995).

DONE AND ORDERED at Orlando, Florida, this 15th day of November, 1995.

PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to:
All Counsel of Record

A TRUE COPY

APPENDIX F

ARBITRATION - OUTLINE CLAIMANT
SHEARSON LEHMAN'S ARROGANCE OF POWER

A. Summary of Statement of Claim
B. Shearson's Wrongful Acts Underlying Claim
    1. Breach of Implied Covenant of Good Faith and Fair Dealing - 2 Counts
    2. Undue Stress and Willful and Outrageous Behavior - 5 Counts
    3. Sexual Harassment - 18 Counts
    4. Sexual Discrimination - 2 Counts
    5. Age Discrimination - 1 Count
    6. Retaliation - 5 Counts
        6.a Constructive Discharge - 1 Count
        6.b Unlawful Termination - 1 Count
C. Securities Industry - Shearson/AMEX (1989 - 1994)
    Arbitration Award History
    Ethics/Corruption
    Way of Doing Business
    A Company "Out of Control"
D. Securities Industry - How the Business is Done
    Corporate
    Division
    Branch
E. Selected Rulings
    NYSE Arbitration
    News Articles
F. Remedies Sought
    Compensatoru Damages
    Punitive Damages
    Reasonable Attorney Fees
    Award Basis - to be distributed on last day of Claimant's presentation

A TRUE COPY

Diana Meyer Class 87-4

Weekly Min Goals	Wk of	Calls	250 Contacts	35 Prospects	Appts	15 Presentations	10 Closes	Qualifiers	Issues
	5/26	185	75	4	0	1	0	0	0
	6/1	356	136	27	2	5	2	3	[illegible]
	6/8	191	117	21	1	1	8	–	–
Appts 6	6/15	203	108	9	1	1	1	– 3	–
	6/22	266	155	19	1	1	1	–	–
	6/29	231	152	27	2	3	3	1	[illegible]
	7/6	319	210	32	1	6	6	1	[illegible]
	7/13	283	174	35	5	9	7	2	[illegible]
Appts 10	7/20	235	130	29	3	6	6	0 4	0
	7/27	183	107	18	1	6	6	0	0
	8/3	165	90	22	3	8	5	0	0
	8/10	299	173	37	4	18	11	0	0
Appts 10	8/17	307	188	17	4	28	24	0 0	0
	8/24	252	164	28	4	32	29	3	15,400
	8/31							10	4
	9/7								
Chicago	9/14								
	9/21								
Austin	9/28								
	10/5	374	225	29	7	(Seminar - Unlisted Callers)		1	10,000
26	10/12	408	263	42	3	17	12	0	—
	10/19	427	277	39	5	20	9	3	27,000
Accounts	10/26	383	254	31	4	14	6	1	55,000
	11/2	311	205	22	8	26	15	0	—
	11/9	354	227	29	5	17	13	1	10,000
	11/16	176	85	16	9	9	6	3	62,000
	11/23	140	62	14	5	5	5	2	7,000
1	11/30	325	197	27	2	16	12	1	2,500
	12/7	152	83	8	12	16	15	1	2,000

	Calls	Contracts	Prospects	Appts	Presentations	Closes	Q.A.	Assets
12/14	237	171	16	4	12	10	3	25000
12/21	180	91	11	3	7	7	1	2000
12/28	44	122	26	15	15	11	2 (19)	12,000 31 Dec.
1/4	132	47	3	8	12	12	8	12,000 (41)
1/11	261	192	33	16	13	11	1	44,000
1/18	306	205	37	19	17	14	2	10,000
1/25	218	183	35	14	14	10	0	—
2/1	194	111	23	9	6	5	0	0
2/8	263	159	27	6	18	15	3	174
2/15	208	164	28	8	8	6	0	— (Assets Frozen)
2/22	312	209	35	4	12	10	0 3/5	48,000
2/29	321	201	29	6	14	11	0	
3/7	288	153	25	6	10	7	0	
3/14	345	236	32	6	19	15	1	30,000
3/21	321	211	28	3	17	16	2	60,000
3/28								
4/4								
4/11								
4/18								